

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing Date: April 21, 2020
Time: 11:00 AM

IN RE:

Xiaonian He,
d/b/a Ginny's Cafe LLC
d/b/a Ginny's USA Inc.,

Debtor.

CASE NO.: 20-40079-cec

CHAPTER 7

Chief Judge: Hon. Carla E. Craig

NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE, that upon the application of HSBC BANK USA, N.A., the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. §362(d), vacating the automatic stay to permit movant, its successors and/or assigns, to enforce its Mortgage on the Debtor's premises located at 70 Little West Street, Unit 23B, New York, New York 10004 and for such other and further relief as is just and proper.

This Motion shall be heard at the United States Bankruptcy Court, Eastern District, 271 Cadman Plaza East, Courtroom# 3529, Brooklyn, New York, 11201, or as soon thereafter as counsel may be heard on April 21, 2020 at 11:00 a.m.. Please note that as of March 31, 2020, pursuant to this Court's procedures during the CoVid-19 National Emergency, and until further notice, all hearings will be held by telephone. Please see the telephonic appearance procedures on the website for the United States Bankruptcy Court for the Eastern District of New York and can be located at <https://www.nyeb.uscourts.gov/content/chief-judge-carla-e-craig>.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the hearing date of this Motion.

Dated: Bay Shore, New York
March 31, 2020

**FRENKEL LAMBERT WEISS
WEISMAN & GORDON LLP**

BY: /s/Elizabeth Doyaga
Elizabeth Doyaga, Esq.
53 Gibson Street
Bay Shore, New York 11706
(631) 969-3100
Our File No.: 01-088632-B00

TO:

Xiaonian He,
d/b/a Ginny's Cafe LLC
d/b/a Ginny's USA Inc.,
255 Ovington Ave
Brooklyn, NY 11209

Baya Harrison, Esq.
Attorney for the Debtor
The Harrison Law Firm P.C.
38-08 Union Street
Suite 11A
Flushing, NY 11354

Bay Whitman Harrison, IV
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38-08 Union Street
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Flushing, NY 11354

Alan Nisselson
Chapter 7 Trustee
c/o Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019

U.S. Trustee
Office of the United States Trustee
Eastern District of NY (Brooklyn Office)
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, NY 10014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

IN RE:
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**AFFIRMATION IN SUPPORT OF MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

Elizabeth Doyaga, an attorney admitted to practice law, in the courts of the State of New York and in this Court, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, attorneys for HSBC BANK USA, N.A. (hereinafter "HSBC"), a secured creditor of the Debtor. I am fully familiar with the facts of this case and submit this affirmation in support of HSBC's Motion for relief from the automatic stay.

2. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure Rule 4001, 9013 and 9014 and Section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code") for an Order (1) granting HSBC relief from the automatic stay due to the failure of the Debtor to make payments, and/or provide HSBC with adequate protection for its security interest in the real property located at 70 Little West Street, Unit 23B, New York, New York 10004 ("Premises"); and (2) granting HSBC such other and further relief as the Court deems just and proper.

3. HSBC is the holder of a Note and Mortgage given by the Debtor on October 26, 2011 to secure payment in the original principal sum of \$946,800.00 (hereinafter "Note" and "Mortgage" respectively), pledging the Premises as security. A copy of the Note and Mortgage are annexed hereto as **Exhibit A**.

4. The Note and Mortgage were transferred to HSBC by properly endorsed Note. A Note and Mortgage may be transferred by either a written assignment or the physical delivery of the Note. The Mortgage passes with the debt as an inseparable incident. See Flyer v. Sullivan, 284 A.D. 687, 134 N.Y.S.2d 521 (1st Dept. 1954); Mortgage Electronic Registration Sys. Inc., v. Coakley, 41 A.D. 3d 674, 838 N.Y.S.2d 622 (2nd Dept. 2007); See also In Re: Feinberg, 442 B.R. 215 (S.D.N.Y 2010).

5. The annexed Assignment of Mortgage ("Assignment"), also evidences the transfer to HSBC. A copy of the Assignment is annexed hereto as **Exhibit B**.

6. On January 07, 2020, the Debtor herein filed a petition under Chapter 7 of the Bankruptcy Code and pursuant thereto an automatic stay was imposed.

7. As required by E.D.N.Y. Administrative Order #533, and pursuant to Local Bankruptcy Rule 4001-1, the completed Background Information Declaration ("Declaration") is attached hereto as **Exhibit C**.

8. As fully set forth in the accompanying Declaration executed by Anna Roman on March 30, 2020, the Debtor is in default under the terms of the Note and Mortgage and the last payment received was February 9, 2018. The Declaration states that the total amount due and owing on the subject loan, as of March 2, 2020, is \$929,163.18.

9. According to a Broker's Price Opinion the subject Premises is valued at \$1,950,900.00. A copy of the Broker's Price Opinion is annexed hereto as **Exhibit D**.

10. On February 13, 2020, the Debtor filed Schedule D of their petition that indicates that in addition to the amount owed to HSBC there are other liens on the Premises as follows: Ron Wish LLC totaling 753,032.00 and Visionaire Condominium charges totaling \$23,149.00. Additionally, on February 13, 2020, the Debtor filed Schedule C of their petition indicating that they are claiming the homestead exemption pursuant to CPLR 5206. A copy of Debtor's Schedules C and D is attached hereto as **Exhibit E**.

11. In view of the total indebtedness due to HSBC, there is no beneficial equity remaining for the Premises for the estate.

12. For the reasons stated herein, the Debtor has failed to adequately protect the interest of HSBC.

13. Additionally, by seeking relief under Chapter 7, the Debtor is not seeking to reorganize and therefore the Premises are not necessary for a successful reorganization. Therefore, relief from stay is warranted pursuant to Section 362(d)(2).

14. Relief from stay is warranted pursuant to Section 362(d)(2) to allow HSBC, its successors and/or assigns to exercise any and all rights under the Mortgage and under the laws of the State of New York, including any action necessary to foreclose its interest in the premises known as 70 Little West Street, Unit 23B, New York, New York 10004.

15. HSBC will provide an accounting to the trustee of any surplus monies realized from the sale of the Premises.

WHEREFORE, movant respectfully requests an order vacating the automatic stay as it pertains to the Debtor's premises located at 70 Little West Street, Unit 23B, New York, New York 10004 and for such other and further relief as is just and proper.

Dated: Bay Shore, New York
March 31, 2020

Respectfully submitted,

**FRENKEL LAMBERT WEISS
WEISMAN & GORDON LLP**

BY: /s/Elizabeth Doyaga
Elizabeth Doyaga, Esq.
53 Gibson Street
Bay Shore, New York 11706
(631) 969-3100
Our File No.: 01-088632-B00

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORKIN RE:
Xiaonian He,
d/b/a Ginny's Cafe LLC
d/b/a Ginny's USA Inc.,

Debtor.

X
CASE NO.: 20-40079-cec

CHAPTER 7

Chief Judge: Hon. Carla E. Craig

X
CERTIFICATE OF SERVICE

I, Jessica Spiegelman, do certify that on March 31, 2020, I electronically filed the within Notice of Motion for Relief from the Automatic Stay and Motion for Relief from the Automatic Stay, Order Granting Relief from the Automatic Stay in the above titled case with the Clerk of the Bankruptcy Court using the CM/ECF system, which sent notification of such filing to the following:

Baya Harrison, Esq.
Attorney for the Debtor
The Harrison Law Firm P.C.
38-08 Union Street, Suite 11 A
Flushing, NY 11354
Email: bwh@heboya.com

Bay Whitman Harrison, IV
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Alan Nisselson, Chapter 7 Trustee
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156 West 56th Street
New York, NY 10019
Email: anisselson@windelsmarx.com

U.S. Trustee
Office of the United States Trustee
Eastern District of NY (Brooklyn Office)
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, NY 10014
Email: USTPRegion02.BR. ECF@usdoj.gov

X
CERTIFICATE OF SERVICE

I, Colleen Kumar, further certify that on March 31, 2020, I mailed the within Notice of Motion for Relief from the Automatic Stay and Motion for Relief from the Automatic Stay, Order Granting Relief from the Automatic Stay to the parties below via first class mail:

Xiaonian He,
d/b/a Ginny's Cafe LLC
d/b/a Ginny's USA Inc.,
255 Ovington Ave
Brooklyn, NY 11209

Alan Nisselson, Chapter 7 Trustee
c/o Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019

Baya Harrison, Esq.
Attorney for the Debtor
The Harrison Law Firm P.C.
38-08 Union Street, Suite 11A
Flushing, NY 11354

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Chief Judge: Hon. Carla E. Craig

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

Upon the unopposed Motion of HSBC BANK USA, N.A., dated March 31, 2020, seeking relief from the automatic stay and after a hearing held on April 21, 2020, this date attended by Movant through its attorneys Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, it is

IT IS THEREFORE;

ORDERED, that the stay afforded by 11 U.S.C. §362(a) be, and is hereby, modified to permit HSBC BANK USA, N.A., its successors and/or assigns, to pursue its all rights under applicable state law with respect to the premises located at 70 Little West Street, Unit 23B, New York, New York 10004, including all remedies available by applicable law including but not limited to foreclosure, eviction, loss mitigation, short sale offers and/or deed in lieu and property preservation, is further

ORDERED, that the trustee be informed of any surplus monies resulting from the sale of the collateral.